

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HOWARD J. BEACHUM,

Defendant-Appellant.

UNPUBLISHED
October 24, 2000

No. 220746
Muskegon Circuit Court
LC No. 98-041886-FH

Before: Fitzgerald, P.J. and Hood and McDonald, JJ.

MEMORANDUM.

Defendant was convicted following a jury trial of possession with the intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). He received a sentence of 3½ to 20 years' imprisonment, and appeals as of right, questioning only his sentence.. We affirm.

Defendant argues that his sentence is disproportionate to the offense and the offender. We disagree. Defendant's minimum sentence of forty-two months fell within the guidelines range and is thus presumptively proportionate. *People v Williams (After Remand)*, 198 Mich App 537, 543; 499 NW2d 404 (1993). While a sentence within the guidelines range can conceivably violate proportionality in "unusual circumstances," *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990), the factors cited by defendant during sentencing and on appeal to minimize his culpability are not unusual circumstances that would overcome that presumption. See *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

Next, defendant argues that he is entitled to a reduced sentence in light of the new statutory sentencing guidelines found at MCL 769.31 *et seq.*; MSA 28.1097 *et seq.* Specifically, defendant points out that the sentencing guidelines in effect at the time defendant was sentenced called for a minimum sentence anywhere from 18 to 60 months. Subsequently the Legislature enacted new guidelines, under which defendant's minimum sentence would be anywhere from 0 to 11 months.

Defendant's arguments are without merit. As plaintiff points out, this Court recently reviewed the issue of whether the new guidelines would be applied retroactively in *People v Reynolds*, 240 Mich App 250; ___NW2d___ (2000). In *Reynolds*, the defendant's offense had been committed in 1997;

he argued that the new guidelines, which were effective in 1999, should be applied to his sentence. This Court succinctly rejected the defendant's arguments. The identical reasoning is applicable here.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Harold Hood

/s/ Gary R. McDonald